

**In the United States District Court
For the Southern District of Illinois**

James Wesley Hack,

Plaintiff,

v

Case No. 17-cv-1060

United States of America,

Defendant.

Original Complaint

1. This court has subject matter jurisdiction under 28 USC 1346 and this claim is brought under the Federal Tort Claims Act, 28 USC 2671, et seq.

2. The plaintiff, James Hack, has complied with the provisions of 28 USC 2675 of the Federal Tort Claims Act and plaintiff's Standard Form 95 is attached as Exhibit 1.

3. The defendant, United States of America, through the Department of Veterans Affairs, operates the Marion VA Medical Center in Marion, Illinois.

4. The required Attorney's Affidavit and Physician's Report are attached as Exhibits 2 and 3.

Count 1

5. On February 12, 2016, plaintiff presented to the Marion VA Medical Center for podiatric surgery consisting of a right side Achilles tendon reattachment and calcaneal exostectomy to be performed by Dr. Gary E. Baer.

6. Attending Dr. Baer was Clarence Williams, a certified registered nurse anesthetist, whose supervisor was an Ophthalmologist, Irene Fedorovich.

7. Before his surgery the plaintiff was scheduled to receive Sevoflurane, an inhalational anesthetic intended to maintain him under general anesthesia throughout his surgical procedure.

8. The plaintiff did undergo the intended surgery during the morning of February 12, 2016 but he did not receive the Sevoflurane that he was scheduled to receive while he was undergoing surgery.

9. The defendant's agents and employees were negligent in one or more of the following ways in failing to provide plaintiff with the Sevoflurane that he was scheduled to receive during his surgery:

- a) they failed to properly set up and monitor the vaporizer that was essential for delivering the Sevoflurane to the plaintiff and which was allegedly not functioning because it had become unseated by the presence of a wedged roll of tape;
- b) they failed to monitor the gas monitor or the monitoring flow chart, which plainly showed that the plaintiff was not receiving Sevoflurane from 9:13 AM until 10:29 AM;

- c) they failed to appreciate the significance of the plaintiff's increased hypertension and tachycardia during the surgery even though he had received controlling medication before surgery.

10. At 10:29 AM the surgeon, Dr. Gary E. Baer, observed the plaintiff move his right leg during the surgery and immediately advised Clarence Williams of this occurrence who only then discovered the plaintiff was not receiving the Sevoflurane.

11. The plaintiff experienced the surgery without the benefit of the prescribed anesthesia and as a proximate result thereof he was injured and experienced intense physical pain and mental anguish, to the extent that he wished for the relief of death.

Count 2

12. Plaintiff realleges paragraphs 1-11 above.

13. Plaintiff's injury and damages were sustained while he was completely immobilized and under the exclusive control of the defendant's agents and employees in the operating room of the Marion VA Medical Center.

14. In the normal course of events, plaintiff would not have sustained the injury and damages that he did if the defendant's agents and employees had used ordinary care while he was under their control in the operating room of the Marion VA Medical Center.

Therefore, plaintiff prays for a judgment against the defendant in the amount of \$5 million and his costs of suit.

Respectfully submitted,

James Wesley Hack, Plaintiff

By s/G. Patrick Murphy

MURPHY & MURPHY LLC
Attorneys for Plaintiff
3415 Office Park Drive, Suite D
Marion, IL 62959
Ph: 618.248.3236
gpatrick@murphymurphyllc.com